

ORIGINAL

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION

WASHINGTON, DC 20554

In the Matter of )  
 )  
Amendment of Section 73.202(b) ) MM Docket 98-176  
Table of Allotments ) RM No. - 9363  
FM Broadcast Stations )  
(Killeen, and Cedar Park, Texas) )

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

COMMENTS

Texas Star Radio, Inc. ("TSR"), licensee of Station KKZN(FM), Haltom City, Texas and Cen-Tex Media, Inc. ("Cen-Tex"), licensee of Station KSTV-FM, Dublin, Texas, jointly, by their counsel, hereby file comments in support of the proposed relocation of Station KAJZ(FM) from Killeen, Texas to Cedar Park, Texas. In support hereof, TSR and Cen-Tex state as follows:

1. The Notice of Proposed Rule Making, 13 FCC Rcd 18790 (1998), sought comments on the proposed reallocation to Cedar Park which involves pre-existing short spacings to both KKZN and KSTV-FM. These short spacings would not change under the proposal because no change in transmitter site is proposed. The NPRM based its proposal on a prior case, Newnan and Peachtree City, Georgia 7 FCC Rcd 6307 (1992). In the Newnan case the Commission stated "[i]n taking this action, we recognized that we were creating a new short-spaced allotment in contravention of Section 73.207 of the Rules." See para. 4 of the NPRM.

2. The Commission is wrong in treating a request by an existing short spaced station to change community of license as a new allotment. The station is making a major change in its facilities and should be governed by current Commission rules as set forth in Sections 73.213 and 73.215 for these types of changes. Those rules allow an existing station to modify its facilities provided the pre-existing short spacing is either decreased or maintained (with no increase in or creation of prohibited overlap). The same rationale should certainly apply here where there is no technical change in the facility. In this regard, the Commission has approved a relocation where the short spacing was decreased. See e.g., East Los Angeles, Long Beach and Frazier Park, California 10 FCC Rcd 2864 (MMB 1995).

3. The Commission should not limit this policy to pre-1964 grandfathered short spaced stations. The same rationale applies to stations which are short spaced regardless of the reason. A large number of stations have become short spaced due to the actions of other stations. For example numerous stations have been permitted to relocate under Section 73.215 (contour protection) and create a short spacing regardless of the protected station's desire. Here, both KSTV-FM and KKZN(FM) are Section 73.215 short spaced stations protecting KAJZ.

4. The Petition for Rule Making (RM-9395) filed by USA Digital Radio Partners, L.P., (See Public Notice DA 98-2244, released November 6, 1998) to permit the introduction of digital audio broadcasting (DAB) indicates that out of approximately 5,600 commercial FM stations licensed in the U.S., approximately 3,280 stations (60%) have at least one short spacing. If the Commission were to limit the ability of these 3,280 stations to change their community of license, the Commission would be creating a large group of stations which are treated differently without a valid public interest reason for doing so. In addition, the public would be deprived of the benefits that these stations could provide by changing community of license. As a matter of fairness and as

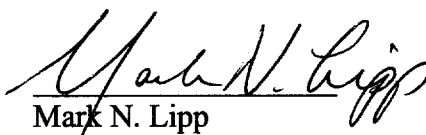
long as the Commission's technical rules are not violated, the Commission should allow short spaced stations to offer a higher priority service to a new community. Further, the ability to change community of license should not be based on whether the station was in operation prior to 1964 or was "victimized" by another station causing the short spacing by a Section 73.215 move.

5. The Commission's decision in Newman and Peachtree City, Georgia, *supra* was correct. The determination should be based on public interest considerations and not the semantic label of "a new short spaced allotment" when, in fact, neither the allotment nor the short spacing is new.

6. Accordingly, Texas Star Radio, Inc. and Cen-Tex Media, Inc. believe that the Commission should allow the proposed change of Station KAJZ to relocate its community and to apply the policy to all short spaced stations which can otherwise comply with the Commission's technical rules and provide a public interest benefit.

Respectfully submitted,

TEXAS STAR RADIO, INC.  
CEN-TEX MEDIA, INC.

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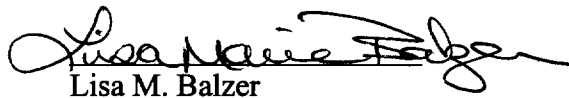
Their Counsel

November 16, 1998

## CERTIFICATE OF SERVICE

I, Lisa M. Balzer, do hereby certify that on this 16th day of November, 1998, I have mailed the foregoing "COMMENTS" to the following:

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